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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/124,280    07/29/98    PORRO

M    576008

EXAMINER

HM22/0815

MINNIFIELD, N

ART UNIT

PAPER NUMBER

1645

13

DATE MAILED:

08/15/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

**Office Action Summary**

Application No.

09/124,280

Applicant(s)

PORRO, MASSIMO

Examiner

Nita M. Minnifield

Art Unit

1845

– The MAILING DATE of this communication appears on the cover sheet with the correspondence address –  
Period for Reply

**A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.**

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on 08 May 2001.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-8, 10-17, 19-35 and 37-62 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8, 10-17, 19-35 and 37-62 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All   b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)                      4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)                      5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_                      6) ☐ Other: \_\_\_\_\_

Art Unit: 1645

## DETAILED ACTION

### *Continued Prosecution Application*

1. The request filed on May 8, 2001 for a Continued Prosecution Application (CPA) under 37 CFR 1.53(d) based on parent Application No. 09/124280 is acceptable and a CPA has been established. An action on the CPA follows.
2. Applicant's amendment filed May 8, 2001 is acknowledged and has been entered. Claims 9 and 36 have been canceled. Claims 1, 10, 11, 19-24, 26-35, 37-42, 47, 49, 51, 54 and 55 have been amended. New claims 57-62 have been added. Claims 1-8, 10-17, 19-35 and 37-62 are now pending in the present application. All rejections have been withdrawn in view of Applicant's amendment, with the exception of those discussed below.
3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
4. Claims 25, 35, 39, 42-46, 49 and 50 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claims are vague and indefinite in that the claims refer to specific amino acid sequences, however the sequences do not conform to the limitations set forth in the parent claim. For example, claim 1 recites a peptide  $(A)_n$ ,  $(AB)_m$ ,  $(ABC)_p$ . The peptide set forth in claim 25, 35, 39, 42-46, 49 and 50 do not conform to the formula. Applicant should insure that all sequences conform to the formulas set forth in parent claim 1. Further, do the amino acid sequences of the peptide have to conform to all three of these formulas or conform to just one of these formulas?

It is noted that this rejection has been maintained as Applicant has not responded to this rejection.

It is noted that Applicant's May 8, 2001 amendment did not amend the claims with regard to this rejection. The Examiner appreciates the amendment of some of the claims to overcome this rejection, however certain claims (as set forth above) are still vague and indefinite with regard to the "formula" sequences as outline in the previous Office Action. Further, claim 39 should re-insert "wherein" again so that the reading of the claim flows better.

5. The rejection of claims 1-8, 10-17, 19-34, 51 and (now 57-62) under 35 U.S.C. 102(b) as being anticipated by Porro is maintained.

Applicant's arguments filed August 22, 2000 have been fully considered but they are not persuasive. Applicant's arguments have been addressed previously. Further, the claims do not recite "stoichiometric excess of peptide relative to the lipid moiety". However, the Examiner is not suggesting addition of this limitation to the claims.

Applicant's arguments filed May 8, 2001 have been fully considered but they are not persuasive. Applicant's arguments have been addressed previously. Applicant has argued that the Porro patent does not disclosed using a stoichiometric excess of the peptide relative to LPS. However, the determination of optimum concentrations of reactants or disclosed using a stoichiometric excess of the peptide relative to LPS using in within the level of ordinary skill in the art. See In re Kronig, 190 USPQ 425.

6. Claims 1-8, 10-17, 19-34, 51 and 57-62 are rejected under 35 U.S.C. 103(a) as being unpatentable over Porro.

Porro et al teaches the claimed invention as set forth in the previous Office Actions. With regard to the ratio of LPS and peptide, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to use whatever

ratios or excesses of LPS and peptides since the determination of optimum concentrations of reactants or disclosed using a stoichiometric excess of the peptide relative to LPS using in within the level of ordinary skill in the art. See In re Kronig, 190 USPQ 425.

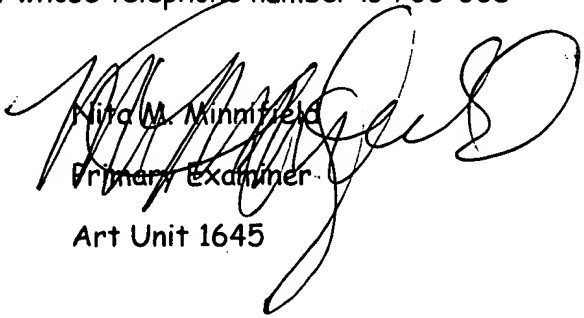
7. No claims are allowed.

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nita M. Minnifield whose telephone number is 703-305-3394. The examiner can normally be reached on M-F (8:00-5:30) Second Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lynette R.F. Smith can be reached on 703-308-3909. The fax phone numbers for the organization where this application or proceeding is assigned are 703-308-4556 for regular communications and 703-308-4556 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0196.

  
Nita M. Minnifield  
Primary Examiner  
Art Unit 1645

August 13, 2001